

**IN THE MATTER of
the Resource Management Act 1991**

AND

**IN THE MATTER of
Hearing of submissions, further
submissions and variations on the
Proposed Te Tai o Poutini Plan**

**MINUTE 56 – WITHDRAWAL OF ORIGINAL
SUBMISSIONS POINTS**

INTRODUCTION

1. Over the past year the Hearings Panel has been notified of the withdrawal of submission points by two parties, namely WMS Group (HQ) Limited & WMS Land Co. Limited and Te Tumu Paeroa - Office of the Māori Trustee.
2. The Hearing Panel has sought legal advice from Wynn Williams on the process associated with the withdrawal of submission points and where that then leaves further submissions in support of or opposing the original submission points.
3. The legal advice received from Wynn Williams is attached as Appendix 1.

IMPLICATIONS

4. The legal advice from Wynn Williams is that there is no prescribed process under the Resource Management Act 1991 for the withdrawal of submission points and that the Hearings Panel has the discretion to determine its own process.
5. The legal advice recommends that those submitters wishing to withdraw their submissions should seek leave from the Hearings Panel to withdraw the relevant original submission points and that upon receipt of an application, the Hearings Panel can then consider whether any further submitters would be prejudiced by the withdrawal of those original submission points and, if necessary, determine how to mitigate any such prejudice.
6. Wynn Williams considers that should the Hearings Panel be inclined to grant leave to withdraw original submission points it should only do so on the basis that those further submitters have standing to maintain their further submission points and be heard.

HEARINGS PANEL DIRECTION

7. Having considered the legal advice from Wynn Williams, the Hearings Panel have agreed to accept the withdrawal of submission points by both WMS Group (HQ) Limited & WMS Land Co. Limited and Te Tumu Paeroa - Office of the Māori Trustee. While we note that the majority of further submissions were in opposition to the original submission points and the withdrawal of these submission points would appeared to address the further submitters concerns, we have resolved that all further submitters should retain their standing and be heard should they so wish to do so in cases where the original submission point has been withdrawn.



Dean Chrystal

Independent Commissioner – Chair - on behalf of the Hearing Panel members

13 December 2024

MEMORANDUM

Date: 9 December 2024

To: Lois Easton

From: Alice Balme

Withdrawal of submission points

1. There is no prescribed process under the Resource Management Act 1991 (**RMA**) for the withdrawal of submission points. The Panel has discretion to determine its own process.¹
2. In the absence of such a process, we recommend that those submitters wishing to withdraw their submissions should seek leave from the Panel to withdraw the relevant original submission points. Upon receipt of such an application, the Panel can then consider whether any further submitters would be prejudiced by the withdrawal of those original submission points and, if necessary, determine how to mitigate any such prejudice.
3. The RMA does not distinguish between original submitters and further submitters; both have standing to be heard on an original or further submission. However, clause 8 of Schedule 1 to the RMA provides that a further submission must be limited to a matter in support of or in opposition to the relevant submission made under clause 6 of Schedule 1 to the RMA. For further submitters to be heard, any further submissions must therefore be connected to original submissions and as a result of this, we consider that issues of prejudice to further submitters arise if original submission points are withdrawn.
4. For any submitters that have further submitted in support of an original submission and the decision requested therein, the withdrawal of that original submission point results in prejudice to the further submitter, given the decision requested no longer exists to be supported. This is particularly problematic if those further submitters did not lodge original submissions seeking a similar decision, or did not further submit on a similar original submission.
5. Similarly, for those further submitters in opposition to an original submission and the decision requested therein, the same prejudice arises given the resultant inability to oppose that decision requested before the Panel through calling evidence (although, arguably those further submitters in opposition benefit from the relief requested being withdrawn).
6. In terms of any potential mitigation of such prejudice, if the Panel was inclined to grant leave to withdraw certain original submission points, we consider that the Panel should only do so on the basis that those further submitters have standing to maintain the further submission points and be heard. This might be because of one of a number of reasons:
 - (a) They may already have an original submission that provides scope for the relief they are seeking; or
 - (b) They may have a further submission on a different original submission that seeks the same relief.
7. If a further submitter would lose standing as a result of the withdrawal of an original submission point, the Panel could consider refusing the withdrawal of the original submission point, but excusing the original submitter from appearing further or presenting any evidence in support of that original submission point. This would ensure that the further submitter maintained standing to pursue their further submission.²

¹ RMA, s 41.

² We note that a similar approach has been taken by the Environment Court where an appellant sought to withdraw their appeal and the section 274 wanted to maintain the appeal and the right to be heard. The Court excused the appellant from appearing but the appeal remained live in a pro forma manner (*Prestons Road Ltd v Canterbury RC* [2011] NZEnvC 167).

8. That said, we are not aware of any case law on this point. The Panel would need to determine its own process and run the hearing as it sees fit.³

³ RMA, s 41.